

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

FPX, LLC, (d.b.a. FIREPOND),  
Individually and on Behalf of All Others  
Similarly Situated

vs.

GOOGLE, INC., ET AL.

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CASE NO. 2:09-CV-142-TJW-CE

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THE RODNEY A. HAMILTON LIVING  
TRUST and JOHN BECK AMAZING  
PROFITS, LLC, Individually and on Behalf  
of All Others Similarly Situated

vs.

GOOGLE, INC., ET AL.

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CASE NO. 2:09-CV-151-TJW-CE

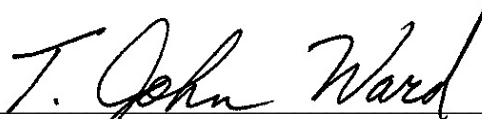
**ORDER**

The above-titled and numbered civil action was referred to United States Magistrate Judge Chad Everingham pursuant to 28 U.S.C. § 636. The report of the Magistrate Judge (209-CV-142, Dkt. No. 117 & 209-CV-151, Dkt. No. 97) has been presented for consideration. The report recommends that the court deny Plaintiffs' motions for class certification because Plaintiffs' proposed classes do not meet Rule 23(a)(2)'s commonality requirement, are not cohesive, or, in the alternative, because Plaintiffs' requested relief is inappropriate under Rule 23(b)(2). The report further recommends that the court deny Defendants' motions to exclude Plaintiffs' expert's report and Defendants' motions to strike certain paragraphs of Mr. Marc A. Fenster's declaration.

The court is of the opinion that the conclusions of the Magistrate Judge are correct. Therefore, the court adopts the report of the United States Magistrate Judge, in its entirety, as the

conclusions of this court. Accordingly, it is ORDERED that Plaintiffs' motions for class certification (Dkt. Nos. 77 & 59) are DENIED. It is FURTHER ORDERED that Defendants' motions to exclude Plaintiffs' expert's report (Dkt. Nos. 79 & 61) and motions to strike certain paragraphs of Mr. Marc A. Fenster's declaration (Dkt. Nos. 86 & 69) are DENIED.

SIGNED this 29th day of September, 2011.

  
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T. JOHN WARD  
UNITED STATES DISTRICT JUDGE